

学校编码: 10384

分类号\_\_\_\_密级\_\_\_\_

学号: 13020111150290

UDC\_\_\_\_\_

厦 门 大 学

硕 士 学 位 论 文

论我国食品召回制度之完善

Research on the Perfection of Chinese Food Recall System

王慧姣

指导教师姓名: 于飞 教授

专业名称: 法律硕士 ( 法学 )

论文提交日期: 2014 年 4 月

论文答辩时间: 2014 年 月

学位授予日期: 2014 年 月

答辩委员会主席: \_\_\_\_\_

评 阅 人: \_\_\_\_\_

2014 年 月





## 厦门大学学位论文原创性声明

本人呈交的学位论文是本人在导师指导下,独立完成的研究成果。本人在论文写作中参考其他个人或集体已经发表的研究成果,均在文中以适当方式明确标明,并符合法律规范和《厦门大学研究生学术活动规范(试行)》。

另外,该学位论文为( )课题(组)的研究成果,获得( )课题(组)经费或实验室的资助,在( )实验室完成。(请在以上括号内填写课题或课题组负责人或实验室名称,未有此项声明内容的,可以不作特别声明。)

声明人(签名):  
年 月 日



# 厦门大学学位论文著作权使用声明

本人同意厦门大学根据《中华人民共和国学位条例暂行实施办法》等规定保留和使用此学位论文，并向主管部门或其指定机构送交学位论文（包括纸质版和电子版），允许学位论文进入厦门大学图书馆及其数据库被查阅、借阅。本人同意厦门大学将学位论文加入全国博士、硕士学位论文共建单位数据库进行检索，将学位论文的标题和摘要汇编出版，采用影印、缩印或者其它方式合理复制学位论文。

本学位论文属于：

（        ） 1. 经厦门大学保密委员会审查核定的保密学位论文，  
于        年        月        日解密，解密后适用上述授权。

（        ） 2. 不保密，适用上述授权。

（请在以上相应括号内打“√”或填上相应内容。保密学位论文应是已经厦门大学保密委员会审定过的学位论文，未经厦门大学保密委员会审定的学位论文均为公开学位论文。此声明栏不填写的，默认为公开学位论文，均适用上述授权。）

声明人（签名）：

年        月        日







## 内 容 摘 要

上世纪 60 年代，美国率先确立起产品召回制度，随后被应用于食品领域。因该项制度具有重要的现实意义而被世界各发达国家所借鉴，欧盟各国、加拿大、澳大利亚、日本等发达国家均先后确立了该项制度。我国的食物召回制度起步于上世纪 90 年代末，但是该项制度目前仍处于初步发展阶段。随着我国市场经济的纵深发展，食品领域愈来愈暴露其内部缺陷，近年来食品安全事故的频繁爆发就是有力例证，产品召回制度的完善具有不可替代的重大意义。本文试图通过对发达国家成熟的食物召回制度立法出发，结合我国现实国情，总结出可以借鉴的做法，为我国食物召回制度的完善提供重要的参考。除引言和结语外，全文共分为 3 章。

第 1 章首先对我国的食物召回制度做出基本概述，对该项制度中涉及的一些重要概念进行了界定，并简要介绍了该项制度的起源、发展和理论基础。

第 2 章采用对比分析的方法，通过透析发达国家的具体做法，结合我国国情，对我国食物召回制度存在的诸项问题进行评析，并指出完善该项制度的必要性。

第 3 章针对前文提出的我国食物召回制度存在的具体问题，分别从国家、企业、消费者三个层面提出完善该项制度的法律建议。

**关键词：**食物召回；缺陷食物；法律完善



## ABSTRACT

America created the product recall system in the 1960's firstly, which was then applied to the food field. Many developed countries like European Union, Canada, Australia and Japan all established this system successively. Our country's food recall system started in end of the 1990's, which is still at preliminary stage. As the development of the economy, there are more and more problems in the food field. In recent years, the food safety accidents outbreak frequently that makes the legal perfection of the food recall system necessary in our country. The paper try to reference some developed countries' legal practice to summarize several practical measures by combining our country's conditions.

In Chapter I, the paper gives a basic summary about the food recall system, including the origin, the development and theoretical basis of this system, especially the definitions of some important concepts.

Chapter II analyzes and studies the practices of some developed countries, comments on the defects of our country's food recall system, then points out the necessity of perfection on this system.

In the light of the defects of our country's food recall system, chapter III tries to put forward some perfection measures on this system from three aspects—our country, food enterprises and the vast consumers.

**Keywords:** Food Recall; Defective Food; Legal Perfection



# 目 录

引 言.....	1
第一章 我国食品召回制度概述 .....	2
第一节 食品召回制度中相关概念的界定 .....	2
一、食品召回的含义.....	2
二、食品召回的责任主体.....	3
三、食品召回的前提.....	3
四、食品召回的方式.....	5
第二节 我国食品召回制度的起源及发展 .....	5
一、发达国家较早确立起完善的食品召回制度.....	6
二、我国食品召回制度的立法发展.....	6
第三节 我国食品召回制度的理论基础.....	9
一、企业社会责任释义.....	9
二、实施食品召回是企业承担社会责任的必然要求.....	10
第二章 我国食品召回制度现状及其完善的必要性.....	12
第一节 我国食品召回制度的现状.....	12
一、食品召回法律体系不完善.....	12
二、食品召回法律责任较轻.....	14
三、食品召回监管存有弊端.....	18
四、企业自身原因导致食品召回难以实施.....	20
五、相关配套制度不健全.....	23
第二节 现阶段完善我国食品召回制度的必要性.....	28
一、保护公众利益、维护社会公平.....	28
二、强化企业责任、营造良好经营环境.....	29
三、促进社会和谐、提升国际形象.....	30
第三章 我国食品召回制度的完善建议 .....	312

<b>第一节 国家层面对食品召回制度的完善 .....</b>	<b>31</b>
一、完善我国的食品召回立法.....	31
二、食品召回监管模式的完善.....	34
三、建立完备的食品溯源制度.....	38
四、完善食品安全标准.....	39
五、完善食品召回信息公开制度.....	40
<b>第二节 企业层面对食品召回制度的完善 .....</b>	<b>42</b>
一、树立正确的企业经营理念.....	42
二、建立食品召回责任保险.....	44
<b>第三节 消费者层面对食品召回制度的完善.....</b>	<b>46</b>
一、增强食品安全意识和自身维权意识.....	46
二、正确认识食品召回制度.....	46
三、以主人翁姿态积极参与食品召回监督.....	47
<b>结    语.....</b>	<b>48</b>
<b>参 考 文 献 .....</b>	<b>49</b>
<b>致 谢.....</b>	<b>52</b>

# CONTENTS

<b>Preface.....</b>	<b>1</b>
<b>Chapter 1 Summary of Our Country's Food Recall System.....</b>	<b>2</b>
<b>Subchapter 1 Definitions of Some Important Concepts.....</b>	<b>2</b>
Section 1 Definition of Food Recall.....	2
Section 2 Liability Subject of Food Recall .....	3
Section 3 Premise of Food Recall.....	3
Section 4 Patterns of Food Recall .....	5
<b>Subchapter 2 Origin and Development of Our Country's Food Recall System.....</b>	<b>5</b>
Section 1 Developed Countries Established Food Recall System Earlier.....	6
Section 2 Legal Development of Our Country's Food Recall System .....	6
<b>Subchapter 3 Theoretical Basis of Our Country's Food Recall System.....</b>	<b>9</b>
Section 1 Concept of Corporates' Social Responsibility .....	9
Section 2 Food Recall Is One of the Inevitable Duties of Corporates' Social Responsibility.....	10
<b>Chapter 2 Actuality and Necessity of Perfection of Our Country's Food Recall System.....</b>	<b>12</b>
<b>Subchapter 1 Actuality of Our Country's Food Recall System .....</b>	<b>12</b>
Section 1 Lack of Legislation on the Food Recall System .....	12
Section 2 Regulatory Duties are Lighter .....	14
Section 3 Defects on the Supervision of Food Recall .....	18
Section 4 Corporates' Own Reasons Bring Lots of Blocks to the Function of Food Recall System .....	20
Section 5 Lack of Matching Systems.....	23
<b>Subchapter 2 Necessity of Legal Perfection on Our Country's Food Recall System .....</b>	<b>28</b>
Section 1 Protect Consumers' Rights and Maintain Public Interests .....	28
Section 2 Strengthen Corporates' Social Responsibility and Build a Healthy	

Commercial Environment .....	29
Section 3 Promote Social Harmony and Change the International Image .....	30
<b>Chapter 3 Perfection of Our Country's Food Recall System .....</b>	<b>31</b>
<b>Subchapter 1 Perfection on the Food Recall System at the National Level .....</b>	<b>31</b>
Section 1 Perfection on Legislation of the Food Recall System.....	31
Section 2 Perfection on the Supervision of Food Recall .....	34
Section 3 Perfection of the Food Traceability System.....	38
Section 4 Perfection on the Food Safety Standards .....	39
Section 5 Perfection on the Food Recall Information Disclosure System .....	40
<b>Subchapter2 Perfection on the Food Recall System at Corporates' Level .....</b>	<b>42</b>
Section 1 Establishment of Right Business Philosophy .....	42
Section 2 Establishment of Food Recall Liability Insurance.....	44
<b>Subchapter2 Perfection on the Food Recall System at Consumers' Level .....</b>	<b>46</b>
Section 1 Enhancement of Food Safety Awareness and Self-Protection	
Concept .....	46
Section 2 To View the Food Recall System Correctly .....	46
Section 3 Participation in Food Recal Supervision in a Master's Attitude .....	47
<b>Conclusion .....</b>	<b>48</b>
<b>Bibliography .....</b>	<b>49</b>
<b>Acknowledgement.....</b>	<b>52</b>



Degree papers are in the “[Xiamen University Electronic Theses and Dissertations Database](#)”. Full texts are available in the following ways:

1. If your library is a CALIS member libraries, please log on <http://etd.calis.edu.cn/> and submit requests online, or consult the interlibrary loan department in your library.
2. For users of non-CALIS member libraries, please mail to [etd@xmu.edu.cn](mailto:etd@xmu.edu.cn) for delivery details.

厦门大学博硕士论文摘要库